X-HC—78

33

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS: (In Jail)	1. Padmalochan, S/o Ghansai Dhobi, aged about 40 years. 2. Loghan, S/o Ghansai Dhobi, aged about 30 years. 3. Dadu @ Setram Dhobi, S/o Balakram, aged about 27 years. 4. Ganjha @ Laghansai, S/o Sukhsai Dhobi, aged about 22 years. 5. Ganjhu @ Balakram, S/o Sukhsai Dhobi, Aged about 47 years. All R/o Village- Rokbahar, Police Station- Farsabahar, District: Jashpurnagar (Chhattisgarh).
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through Police Station: Farsabahar, District: Jashpurnagar (Chhattisgarh)
	{Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}	
	Division Bench: Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.	
	19-7-2007	
	Mr. Rakesh Pandey, counsel for the appellants.	
	Mr. Akhil Mishra, Panel Lawyer for the State/respondent.	
	Oral judgment dictated on Dais.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 28-6-2001, passed by the 3rd Additional Sessions Judge (Fast Track Court), Jashpurnagar in Sessions Trial No.217/2000, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 148 & 302 read with Section 149 of the I.P.C., sentenced each of them to undergo R.I. for one year and to undergo imprisonment for life, respectively.

Case of the prosecution, in brief, is that on 1-8-2000 at about 6 p.m. when deceased Girdhari along with his servant Ratansai was returning from his agricultural field to his house, on the ground of animosity between the deceased and the accused persons, all the five accused persons attacked Girdhari with axe & Lathis, as a result of which Girdhari fell down and died on the spot. The matter was reported in Police Station: Bagbahar by Purushottam (PW-1), son-in-law of the deceased, whereupon the first information report (Ex.P-1) was registered and the Investigating Officer left for the scene of occurrence. Site plan Ex.P-3 was prepared by the Halka Patwari. One axe was seized from accused Padamlochan under Ex.P-5, one axe was seized from Lochan under Ex.P-6, one axe was seized from accused Setram (Dadu) under Ex.P-7, one Lathi was seized from accused Ganjha under Ex.P-8 and one Lathi was seized from accused Ganjhu under Ex.P-9. Clothes of accused Dadu @ Setram stained with blood were seized under Ex. P-11. Inquest Ex.P-12 on the body of Girdhari was prepared by the Investigating Officer. The body was sent for post-mortem examination to Primary Health Centre, Lelunga under Ex.P-14, where Dr. Shailendra

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Upadhyay (PW-9) performed autopsy, prepared the post-mortem report (Ex. P-14A) and opined that cause of death was on account of increase of intracranial tension which was the result of multiple injuries on head, the death was homicidal in nature. Site plan Ex.P-16 was prepared by the Investigating Officer. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex.P-22 was received. As per the report blood was found on the Lathis.

After completion of investigation, charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh, from where learned 3rd Additional Sessions Judge, Jashpurnagar received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 10 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them, pleaded innocence and stated that they have been falsely implicated in the crime. They have examined six witnesses in their defence.

Learned trial Court after hearing counsel for respective parties, convicted and sentenced the accused/appellants as aforementioned.

We have heard Mr. Rakesh Pandey, learned counsel for the appellants and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

XI-HC—78

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Mr. Pandey has not disputed the homicidal death of Girdhari. Moreover, Dr. Shailendra Upadhyay (PW-9) has stated in his evidence that he conducted post-mortem on the body of Girdhari on 2nd August, 2000 and noticed as many as eight incised wounds on his body, cause of death of Girdhari was increase of intracranial tension and head injury, the death was homicidal in nature. Above medical evidence is corroborated by the evidence of Ratansai (PW-2), eyewitness, who has stated that the accused persons attacked Girdhari with axe & Lathis. In view of the above, it is established that the death of Girdhari was homicidal in nature.

As far as involvement of the accused/appellants in commission of the crime is concerned, Mr. Rakesh Pandey, learned counsel for the appellants, argued that as far the evidence of Bindumati (PW-3), Rukhmani Bai (PW-4) & Patras Kujur (PW-7) is concerned, in fact they had not witnessed the incident and as per their evidence when they came, Girdhari was lying dead. Learned counsel further argued that as far as the evidence of Ratansai (PW-2) is concerned, perusal of his evidence shows that there was no common object between the accused persons and the accused persons have been falsely implicated in the crime. The evidence of Ratansai is also not worth reliance.

On the other hand, Mr. Akhil Mishra, learned Panel Lawyer, supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence. Ratansai (PW-2) has stated in his evidence that on the fateful day when he along with Girdhari was returning from the agricultural field, he was ahead of Girdhari, when he reached near house of Teli, Girdhari reached in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

front of the house of Padamlochan, he saw that Lochan attacked Girdhari with axe on his head, thereafter, Padamlochan came out of his house, at that time, Girdhari was already lying on ground, when Girdhari attempted to stand, Lochan caught hold of him and Padamlochan attacked him with axe. Thereafter, Ganjha, Ganjhu & Dadu came out from the house of Ganjha, Dadu attacked Girdhari with axe and Ganjha & Ganjhu attacked with club. After seeing the attack, when he tried to intervene, the accused persons abused him and said that they will kill him also, therefore, he went to the house of Girdhari and informed his son Vasudev, daughter Rukhmani & wife Bindobai, they came on the scene and saw that by that time, Girdhari was already dead and the accused persons were attacking. In cross-examination of this witness, defence has not been able to elicit any circumstance which discredits the evidence of this witness. This witness has withstood the cross-examination and has categorically stated that he was along with Girdhari, they were returning from the agricultural field. He has further categorically stated that he was about 100 yards ahead of Girdhari when the attack was made in front of the house of Padamlochan. He has further stated that he went and informed Bindobai & Rukhmani about the incident. Bindobai & Rukhmani have corroborated the said fact that when they came on the scene, they saw that Girdhari was already lying dead.

Perusal of paras 2, 3 & 6 of the evidence of Ratansai (PW-2) reveals that in fact, in the first instance, accused Lochan came out of the house and attacked Girdhari on his head with axe, thereafter, Padamlochan came out of the house and attacked Girdhari with axe on his head, thereafter, Ganjha,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 642/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Ganjhu & Dadu came out from the house of Ganjha, Dadu attacked Girdhari with axe and Ganjha & Ganjhu attacked with Lathis.

Therefore, from the above evidence, it cannot be inferred that all the accused persons formed unlawful assembly and in furtherance of the common object, all of them made a conjoint attack on Girdhari. In the first instance, Lochan came from his house and attacked Girdhari, thereafter, Padamlochan came and attacked, and thereafter, these three accused persons namely, Ganjha, Ganjhu & Dadu said to have come from the house of Ganjha, therefore, formation of unlawful assembly by all the five accused persons has not been established. Moreover, the post-mortem report and the evidence of Dr. Shailendra Upadhyay (PW-9) establish that all the injuries found on the body of Girdhari were incised wounds and those were caused by axe. There was no other kind of injury noticed by Dr. Shailendra Upadhyay (PW-9) which establishes the assault made by Ganjha & Ganjhu with club.

Therefore, involvement of Ganjha & Ganjhu in the crime in question has not been established beyond reasonable doubt, whereas, axe has been recovered from Lochan, Padamlochan & Dadu and the corresponding injuries viz., eight incised wounds have been found on the body of Girdhari. Hence, conviction of Ganjha & Ganjhu cannot be sustained. In the first instance, there is no evidence that all the accused persons formed unlawful assembly and all of them attacked Girdhari with a common object.

In the circumstances, the prosecution has not been able to establish offence against Ganjha & Ganjhu beyond reasonable doubt, whereas, involvement of accused persons Lochan, Padamlochan & Dadu in the crime

Cr.A. 642/01

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in question has been established beyond reasonable doubt. As far as accused persons Lochan, Padamlochan & Dadu are concerned, there is clear, cogent and legal evidence on record regarding the assault made by them with axe on the body of the deceased which was the result of the death of deceased Girdhari.

In the result,

(i) the appeal in respect of Ganjha & Ganjhu succeeds, their conviction and sentences under Sections 148 & 302 read with Section 149 of the I.P.C. are set aside. They are acquitted of the said charges. They be set at liberty forthwith, if not required in any other case.

(ii) the appeal in respect of Lochan, Padamlochan & Dadu partly succeeds. Their conviction under Section 302 read with Section 149 of the I.P.C. is converted into Section 302 of the I.P.C., however, sentence of life imprisonment imposed upon them is maintained. Conviction and sentence imposed upon them under Section 148 of the I.P.C. are set aside and they are acquitted of the said charge.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma